

a certificate of conformity but conforms to United States emission regulations under a modification/test program.” For all nonroad engines imported pursuant to § 89.605 or § 89.609, the label contains the vacuum hose routing diagram applicable to the nonroad engines.

(2) As part of the application to the Administrator for final admission of each individual nonroad engine under § 89.609, the ICI must maintain a copy of the labels for each nonroad engine in a file containing the records for that nonroad engine prior to submitting each application for final admission. ICIs importing under § 89.605 or § 89.609 must attest to compliance with the preceding labeling requirements of this section in each application for final admission.

[59 FR 31335, June 17, 1994. Redesignated and amended at 63 FR 56996, 57021, Oct. 23, 1998]

#### § 89.611 Exemptions and exclusions.

(a) Individuals, as well as ICIs, are eligible for importing nonroad engines into the United States under the provisions of this section, unless otherwise specified.

(b) Notwithstanding other requirements of this subpart, a nonroad engine entitled to one of the temporary exemptions of this paragraph may be conditionally admitted into the United States if prior written approval for the conditional admission is obtained from the Administrator. Conditional admission is to be under bond. The Administrator may request that the U.S. Customs Service require a specific bond amount to ensure compliance with the requirements of the Act and this subpart. A written request for approval from the Administrator is to contain the identification required in § 89.604(a) (except for § 89.604(a)(5)) and information that demonstrates that the importer is entitled to the exemption. Noncompliance with provisions of this section may result in the forfeiture of the total amount of the bond or exportation of the nonroad engine. The following temporary exemptions are permitted by this paragraph:

(1) *Exemption for repairs or alterations.* Upon written approval by EPA, an owner of nonroad engines may conditionally import under bond such

nonroad engines solely for purpose of repair(s) or alteration(s). The nonroad engines may not be operated in the United States other than for the sole purpose of repair or alteration. They may not be sold or leased in the United States and are to be exported upon completion of the repair(s) or alteration(s).

(2) *Testing exemption.* A test nonroad engine may be conditionally imported by a person subject to the requirements of § 89.905. A test nonroad engine may be operated in the United States provided that the operation is an integral part of the test. This exemption is limited to a period not exceeding one year from the date of importation unless a request is made by the appropriate importer concerning the nonroad engine in accordance with § 89.905(f) for a subsequent one-year period.

(3) *Precertification exemption.* A prototype nonroad engine for use in applying to EPA for certification pursuant to this subpart may be conditionally imported subject to applicable provisions of § 89.906 and the following requirements:

(i) No more than one prototype nonroad engine for each engine family for which an importer is seeking certification is to be imported.

(ii) The granting of precertification exemptions by the Administrator is discretionary. Normally, no more than three outstanding precertification exemptions are allowed for each importer. No precertification exemption is allowed if the importer requesting the exemption is in noncompliance with any requirement of this subpart until the noncompliance is corrected.

(iii) Unless a certificate of conformity is issued for the prototype nonroad engine and the nonroad engine is finally admitted pursuant to the requirements of § 89.605 within 180 days from the date of entry, the total amount of the bond is to be forfeited or the nonroad engine exported unless an extension is granted by the Administrator. A request for an extension is to be in writing and received by the Administrator prior to the date that the precertification exemption expires.

(iv) Such precertification nonroad engine may not be operated in the

United States other than for the sole purpose of the precertification exemption.

(4) *Display exemptions.* (i) A nonroad engine intended solely for display may be conditionally imported subject to the requirements of § 89.907.

(ii) A display nonroad engine may be imported by any person for purposes related to a business or the public interest. Such purposes do not include collections normally inaccessible or unavailable to the public on a daily basis, display of a nonroad engine at a dealership, private use, or other purpose that the Administrator determines is not appropriate for display exemptions. A display nonroad engine may not be sold in the United States and may not be operated in the United States except for the operation incident and necessary to the display purpose.

(iii) A temporary display exemption is granted for 12 months or for the duration of the display purpose, whichever is shorter. Two extensions of up to 12 months each are available upon approval by the Administrator. In no circumstances, however, may the total period of exemption exceed 36 months. The U.S. Customs Service bonds a temporary display exemption.

(c) Notwithstanding any other requirement of this subpart, a nonroad engine may be finally admitted into the United States under this paragraph if prior written approval for such final admission is obtained from the Administrator. Conditional admission of these nonroad engines under this subpart is not permitted for the purpose of obtaining such written approval from the Administrator. A request for approval is to contain the identification information required in § 89.604(a) (except for § 89.604(a)(5)) and information that demonstrates that the importer is entitled to the exemption or exclusion. The following exemptions or exclusions are permitted by this paragraph:

(1) *National security exemption.* A nonroad engine may be imported under the national security exemption found at § 89.908.

(2) *Hardship exemption.* The Administrator may exempt on a case-by-case basis a nonroad engine from federal emission requirements to accommo-

date unforeseen cases of extreme hardship or extraordinary circumstances.

(3) *Exemption for nonroad engines identical to United States certified versions.*

(i) A person (including businesses) is eligible for importing a nonroad engine into the United States under the provisions of this paragraph. An exemption will be granted if the nonroad engine:

(A) is owned by the importer;

(B) is not offered for importation for the purpose of resale; and

(C) is proven to be identical, in all material respects, to a nonroad engine certified by the Original Engine Manufacturer (OEM) for sale in the United States or is proven to have been modified to be identical, in all material respects, to a nonroad engine certified by the OEM for sale in the United States according to complete written instructions provided by the OEM's United States representative, or his/her designee.

(ii) *Proof of conformity.* (A) Documentation submitted pursuant to this section for the purpose of proving conformity of individual nonroad engines is to contain sufficiently organized data or evidence demonstrating that the nonroad engine identified pursuant to § 89.604(a) is identical, in all material respects, to a nonroad engine identified in an OEM's application for certification.

(B) If the documentation does not contain all the information required by this part, or is not sufficiently organized, EPA notifies the importer of any areas of inadequacy, and that the documentation does not receive further consideration until the required information or organization is provided.

(C) If EPA determines that the documentation does not clearly or sufficiently demonstrate that a nonroad engine is eligible for importation, EPA notifies the importer in writing.

(D) If EPA determines that the documentation clearly and sufficiently demonstrates that a nonroad engine is eligible for importation, EPA grants approval for importation and notifies the importer in writing. Notwithstanding any other requirement of this subpart, the notice constitutes approval for final admission into the United States.

(d) Foreign diplomatic and military personnel may import a nonconforming nonroad engine without bond. At the time of admission, the importer must submit to the Administrator the written report required in § 89.604(a) (except for information required by § 89.604(a)(5)) and a statement from the U.S. Department of State confirming qualification for this exemption. The nonroad engine may not be sold in the United States and must be exported if the individual's diplomatic status is no longer applicable, as determined by the Department of State, unless subsequently brought into conformity in accordance with §§ 89.605, 89.609, or 89.611(c)(3).

(e) *Competition exclusion.* A nonconforming engine may be imported by any person provided the importer demonstrates to the Administrator that the engine is used to propel a vehicle used solely for competition and obtains prior written approval from the Administrator. A nonconforming engine imported pursuant to this paragraph may not be operated in the United States except for that operation incident and necessary for the competition purpose, unless subsequently brought into conformity with United States emission requirements in accordance with §§ 89.605, 89.609, or 89.611(c)(3).

(f) *Exclusions/exemptions based on date of original manufacture.* (1) Notwithstanding any other requirements of this subpart, the following nonroad engines are excluded, as determined by the engine's gross power output, from the requirements of the Act in accordance with section 213 of the Act and may be imported by any person:

(i) All nonroad engines greater than or equal to 37 kW but less than 75 kW originally manufactured prior to January 1, 1998.

(ii) All nonroad engines greater than or equal to 75 kW but less than 130 kW originally manufactured prior to January 1, 1997.

(iii) All nonroad engines greater than or equal to 130 kW but less than or equal to 560 kW originally manufactured prior to January 1, 1996.

(iv) All nonroad engines greater than 560 kW originally manufactured prior to January 1, 2000.

(2) Notwithstanding other requirements of this subpart, a nonroad engine not subject to an exclusion under § 89.611(f)(1) but greater than 20 original production (OP) years old is entitled to an exemption from the requirements of the Act, provided that it has not been modified in those 20 OP years and it is imported into the United States by an ICI. At the time of admission, the ICI must submit to the Administrator the written report required in § 89.604(a) (except for information required by § 89.604(a)(5)).

(g) An application for exemption and exclusion provided for in paragraphs (b), (c), and (e) of this section is to be mailed to: U.S. Environmental Protection Agency, Office of Mobile Sources, Engine Programs and Compliance Division (6405-J), 401 M Street, SW, Washington, DC 20460, Attention: Imports.

[59 FR 31335, June 17, 1994. Redesignated and amended at 63 FR 56996, 57022, Oct. 23, 1998]

#### § 89.612 Prohibited acts; penalties.

(a) The importation of a nonroad engine, including a nonroad engine incorporated into a nonroad vehicle or nonroad equipment, which is not covered by a certificate of conformity other than in accordance with this subpart and the entry regulations of the U.S. Customs Service is prohibited. Failure to comply with this section is a violation of section 213(d) and section 203 of the Act.

(b) Unless otherwise permitted by this subpart, during a period of conditional admission, the importer of a nonroad engine may not:

(1) Register, license, or operate the nonroad engine in the United States;

(2) Sell or offer the nonroad engine for sale;

(3) Store the nonroad engine on the premises of a dealer (unless approved by the Administrator), owner, or purchaser;

(4) Relinquish control of the nonroad engine to the owner or purchaser; or

(5) Cause a nonroad engine to be altered in any manner subsequent to modification and testing, if applicable, for which an application for final admission is based and submitted to the Administrator, unless approved in advance by the Administrator.